IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14..8..2007

CORAM:

THE HONOURABLE MR.JUSTICE ELIPE DHARMARAO
AND
THE HONOURABLE MR.JUSTICE S.PALANIVELU

Writ Appeal No.463 of 2001

The Tamil Nadu Co-operative Milk
Producers' Federation ltd.
Rep. by its Managing Director
Aavin Illam, Madhavaram Milk Colony
Madras .. Appellant

vs.

1. D.Arulmani

2. State of Tamil Nadu
rep. by Secretary to Government
Department of Animal Husbandry
Madras - 9 ... Respondents

The Writ Appeal is preferred under Clause 15 of the Letters Patent as against the Order of the learned single Judge dated 08.12.2000 made in W.P. No.11742 of 1993 praying to issue of a Writ of certiorari to call for the records of the respondent in its proceedings No.38403/pers. Estt-1/88 dated 18.6.1998 and to quash the same.

For Appellant : Mr.S.Subbiah
For Respondent : Mr.C.Ramesh
For Respondent 2 : Mr.Seethapathy

JUDGMENT

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(Judgment of the Court was delivered by
ELIPE DHARMARAO, J.)

This writ appeal is filed against the order dated 08.12.2000 passed by the learned single Judge made in W.P. No.11742 of 1993, which was filed against the order of termination of services of the petitioner by the Managing Director of the Tamil Nadu Co-operative Milk Producers' Federation Limited [for short, 'Federation'] through proceedings dated 18.6.1993 on the ground that his initial appointment in the Federation was found to be illegal.

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2. By proceedings dated 27.5.1989 passed by the Managing Director of the Tamil Nadu Co-operative Milk Producers' Federation Limited [for short 'Federation'], the petitioner was appointed as Deputy Manager (Marketing). Thereafter, the matter was placed in the Personnel Committee of the Federation for ratification of the action of the then Managing Director in having appointed the writ petitioner, who was the only candidate sponsored by the Institute of Rural Management, Anand. The Personnel Committee, in its 17th Meeting held on 07.8.1990 vide Resolution No.164 resolved to refer the appointment of the petitioner to the Government as the selection was done without advertisement. The Animal Husbandry and Fisheries Department, Government of Tamil Nadu, vide its letter dated 31.3.1993, observing that the appointment of the petitioner is clearly pre-conceived and made against rules, negatived the proposal for ratification of the action of the then Managing Director of the Federation in having appointed the petitioner. Accordingly, the services of the petitioner were terminated by the impugned proceedings dated 18.6.1993 by the second respondent. As against the same, the writ petition was filed.

3. The learned Judge, after going through the materials placed on record and after hearing the learned counsel for the parties, was satisfied that the order passed by the Managing Director of the second respondent Federation was illegal and accordingly, set aside the same thereby allowing the writ petition. Aggrieved at the same, the present appeal is filed by the Federation.

4. We have heard the learned counsel appearing for the parties and have perused the records.

5. Learned counsel appearing for the appellant Federation submitted that the power to create a post is vested only with the Personnel Committee of the appellant Federation and no such decision was taken in the Committee to create a post of Deputy Manager (Marketing) whereas the then Managing Director himself created the post and appointed the first respondent and thereafter, he placed the matter before the Committee for ratification and since the selection was done in violation of Rule 149(3)(a) of the Tamil Nadu Co-operative Societies Rules, 1988 [for short, 'Rules'], the matter was referred to the Government. He further submitted that as per the bye-laws of the Federation, it reserves the right to terminate the services of its employee at any point of time without prior notice or without any enquiry provided if the management comes to the conclusion that the appointment is irregular and not in accordance with the Rules.

6. Learned counsel for the appellant, in support of his contention, relied on the decision of the Supreme Court reported in

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2007 (1) SCC 54 [Ashok Kumar Sonkar vs. Union of India and others] and in paragraph 28, it has been held as follows:

> "A court of law does not insist on compliance with useless formality. It will not issue any such direction where the result would remain the same, in view of the fact situation prevailing or in terms of the legal consequences. Furthermore, in this case, the selection of the appellant was illegal. He was not qualified on the cut-off date. Being ineligible to be considered for appointment, it would have been a futile exercise to give him an opportunity of being heard."

7. Learned counsel for the appellant also relied on the decision of the Supreme Court reported in 1997 (2) SCC 1 [Ashwani Kumar and others vs. State of Bihar and others] wherein paragraph 13 reads as follows:

> ".... it is to be noted that question of confirmation or regularisation of an irregularly appointed candidate would arise if the candidate concerned is appointed in an irregular manner or on ad hoc basis against an available vacancy which is already sanctioned. But if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility."

8. Reliance was also placed on the decision of the Division Bench of this Court reported in 2002 (4) CTC 385 [L.Justine and another vs. The Registrar of Coop. Societies, Chennai, and two others].

9. Relying on the above said authorities, learned counsel for the appellant submitted that the initial appointment of the writ petitioner itself is illegal and contrary to law and he sought for the interference of this Court.

10. On the other hand, learned counsel appearing for the first respondent, relying on the counter filed by the appellant Federation in the writ petition, submitted that during the year 1989, it was felt that one post of Deputy Manager (Marketing) is necessary for monitoring the sale of products to parlours and dealers and Milk Consumer Co-operative Societies and that since the Committee itself has taken a decision to create the post of Deputy Manager (Marketing), the appointment of the first respondent was made by the then Managing Director and, thereafter the same was placed before

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the Committee for ratification and, as such, it cannot be said that the initial appointment itself is contrary to the Rules.

11. A perusal of the records would disclose that the first respondent was appointed in the post of Deputy Manager (Marketing) without any advertisement in the dailies and also by calling for a list of eligible candidates from the employment exchange and it was created by the then Managing Director of the appellant Federation, who is not vested with such power.

12. Rule 149(2) of the Rules contemplates procedure for making the appointment and Clause VII of the Service Rules of the Federation provides for methods of Recruitment. As per Clause VII (e) of the Methods of Recruitment, for any reason, if it is considered expedient to resort to recruitment to any category by any other method, it could be done with the approval of the Board.

13. Therefore, it is clear that the condition precedent for making the appointment is the approval of the Committee. But in the case on hand, the Managing Director himself has created the post without obtaining approval from the Board and appointed the first respondent and thereafter, sought for ratification of the same. We are satisfied that there is no rule enabling the Managing Director to create the post and make the appointment on his own and thereafter, seek for ratification of the same. On the other hand, the Managing Director should have obtained approval of the Committee for creation of the post and thereafter, should have made the appointment.

14. In the light of the above, we are of the clear view that the appointment of the writ petitioner is contrary to Rule 149 (2) of the Rules read with Clause VII (e) of the Recruitment Rules of the Federation. We are also of the opinion that the initial appointment of the writ petitioner / first respondent itself is illegal and in violation of principles of natural justice and as such, the same is liable to be set aside.

15. In the result, the writ appeal is allowed setting aside the order of the learned Judge. No costs.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

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To

Secretary to Government
Government of Tamil Nadu
Department of Animal Husbandry
Madras - 9

1 cc to the Government Pleader, High Court, Madras, SR. 51027
1 cc to Mr.S. Subbiah, Advocate, SR. 50790
1 cc to Mr.P.R. Raman, Advocate, SR. 50740

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